

IN THE SENATE OF THE UNITED STATES.

MAY 6, 1858.—Ordered to be printed.

Mr. BIGLER submitted the following

**REPORT.**

*The Committee on Commerce, to whom was referred the petition of the president and stockholders of "the Florida Steam-packet Company," beg leave to report:*

The memorialists are the owners of the steamer "Carolina," plying between Charleston, South Carolina, and Pilatka, on the St. John's river, Florida, touching at the intermediate ports and landings. They allege that said steamer was unlawfully seized by James G. Dell, the collector of customs at the port of Jacksonville, on the 21st day of May, 1857, and detained for a period of twenty-eight days, to the serious damage of the interests of the owners; and they ask Congress to make reasonable remuneration to them for the loss so imposed, which loss they estimate at \$8,000.

This controversy has arisen out of the administration of the 9th and 10th sections of the law of 1807 "to prohibit the importation of slaves," &c. These sections have sole reference to the transportation of slaves coastwise, from one port to another, within the jurisdiction of the United States; the main points in the case being whether the master of a vessel shipping slaves at one port in the United States consigned to another was bound to exhibit the manifest and permit at intermediate points, or whether a simple report of the presence and destiny of the vessel was sufficient; and whether the law of 1807 should be construed to apply to the casual transportation of slaves from one port to another within the same State, though in different collection districts.

There seems to be, happily, in this controversy, no material difference on points of fact. It is not denied that the steamer was seized and detained, as alleged, nor is there any essential discrepancy in the history of the affair on important points, as presented by the memorialists on the one side, and the government officers on the other. The inquiry is, therefore, readily reduced to the real points at issue, while much of the correspondence presented by the petitioners, being wholly immaterial, need not be noticed.

The only important questions that arise in the examination of the case are these:

First. Had the collector at Jacksonville a legal and proper right, on the state of facts presented, to so seize and detain the said steamer?

Second. Did the master of said steamer disregard or violate the law, as charged; and if so, was such disregard or violation wilful and deliberate, or was the act unwitting error, superinduced by opinions previously expressed by officers of the government as to what the law required at his hands?

As to the first of these propositions, if the letter of the law is to be observed, then there would seem to be an end of the controversy. The master was bound to present his papers to the collector at Jacksonville whenever and as often as the steamer appeared in that port with slaves on board shipped from Charleston, or any other point out of the State of Florida, destined for that or any other port in said State, or with slaves shipped from Pilatka to Charleston or Fernandina; and that any neglect or refusal to do so rendered the vessel liable to the penalties prescribed in the law.

These views, it will be seen, are in accordance with those of the Secretary of the Treasury, who, on the 9th day of June last, whilst holding that, under "the circumstances," the steamer should be released, decided that she had been "rightfully seized."

The following correspondence between James G. Dell, their collector at Jacksonville, Florida, and the reply of the Secretary of the Treasury, presents a full and explicit view of the facts and the law of the case:

DISTRICT OF ST. JOHN'S,  
*Port of Jacksonville, June 4, 1857.*

SIR: It becomes my duty, as collector of this port, to inform you that on the evening of the 21st of May, 1857, I seized the steamship Carolina, Thomas Surtis master, for violation of the 9th and 10th sections of the revenue law approved March 2, 1807. Said steamer performs weekly voyages from the port of Charleston, South Carolina, to Pilatka, "in this district."

The following are specifications of violations for which said seizure was made: The collector of this district ascertained, upon reliable authority, that on the 8th day of May, 1857, said steamer received on board in this district a slave, and transported the same to the port of Charleston, South Carolina, without producing a manifest, and clearing said slave from this port, as required by law. On the return of said steamer, the collector required the master to produce the manifest, and informed him that in future he must clear all slaves transported from this district, and produce a manifest and obtain a permit for the landing of all slaves brought into this district, under penalty of the law.

On the 13th of May, her next trip, "notwithstanding the positive order of the collector of this port, at the same time informing said master of the steamship Carolina what would be the consequence of a further violation of the requirements of the collector, should he attempt to evade or violate the revenue laws," said steamer took on board at the port of Charleston aforesaid a slave or slaves, and landed the same at Pilatka, "in this district," without producing to the collector of this port the evidence required by said act of their having

been cleared at the port of Charleston, and landed the same without obtaining a permit so to do. On arrival of said steamer at this port, on the 13th day of May, the collector endeavored to ascertain if there were any slaves on board of said steamer; and not being able to get any information from the officers of the steamer, the collector deemed it advisable to place an inspector on board to proceed with her to Pilatka, and called on Captain Surtis and informed him he wished to put an officer on board his steamer. Said officer was then taken on board. On her return to this port from Pilatka, said inspector reported one slave landed at Pilatka from on board said steamer, "said slave having been taken on board said steamer at the port of Charleston, South Carolina;" in my opinion, showing a wilful determination on the part of the captain of said steamer not to comply with the law, as per my instructions to him, and construction of the same. Said inspector also reports that he was treated very *ungentlemanly* and *improperly* by the officers of said steamship, whilst on board, by refusing him proper accommodations, and exacting the regular *fare* to and from Pilatka. I, as collector, informed Captain Surtis that he must clear his vessel according to my construction of the law, &c. In reply, he made answer, "under much excitement and anger," that *he* was familiar with the law, and that he had *no right*, in his opinion, "*and from what he had learned from others*," to clear his vessel from this port to the port of Charleston, South Carolina; that he was *right*, and the collector of this district was wrong, although he would clear on account of being compelled. I cleared said steamer, according to law, and allowed her to proceed on her voyage to the port of Charleston, South Carolina. On the 20th day of May, 1857, said steamer brought into this district (10) eleven slaves from the port of Charleston, South Carolina, without producing to the collector of this district a manifest, or clearance, of said slaves from said port of Charleston, South Carolina, and landed said slaves without reporting or obtaining a permit; also, having no manifest, "or permit," of cargo on board from said port of Charleston—confirming, in my opinion, a *positive* and *wilful* determination, on the part of the captain, not to *regard* or *respect* the revenue laws or collector of this district. I allowed the said steamer to proceed to Pilatka, "*in this district*," her place of destination. On his return to this port, on his voyage to Charleston, South Carolina, on account of a *further* and *positive* refusal to comply with my decision, and to clear his vessel for the port of Charleston, South Carolina, according to my construction of the law, I seized said steamer for violations of the revenue laws, and gave her in charge of the United States deputy marshal, and also put an inspector on board for further security of the steamer; and immediately informed the United States marshal and United States district attorney, "who live at a considerable distance from this place," of my proceedings in the matter. Further, Thomas Surtis, commander of said steamer, *has not*, "in a single instance," made his appearance at the custom-house at this port since he has been in command of said steamer; and that, "from what he has said to the officers of the customs and other citizens of this place," he has, for the last three or for trips of said steamer, held the officers of the customs, also the custom-houses, of this district in

utter contempt, bidding defiance to the collector of this port and the revenue laws.

I have the honor to be, very respectfully, your obedient servant,

JAMES G. DELL,  
*Collector.*

Hon. HOWELL COBB,  
*Secretary of the Treasury.*

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*Letter of the Hon. Howell Cobb.*

TREASURY DEPARTMENT, June 9, 1857.

SIR: I acknowledge the receipt of your several letters of the 22d and 23d ultimo and 4th instant, stating the facts in regard to the seizure of the Carolina, under your construction of the provisions of the act of March 2, 1807, applied to a vessel plying as a regular packet between Charleston and Pilatka, and stopping on the route at Fernandina and Jacksonville to take in and land cargo or passengers.

The Carolina, as I understand the case, was seized for a violation of the provisions of the act of March 2, 1807, prohibiting the importation of slaves into any port or place within the jurisdiction of the United States, and after a careful examination of the reports from yourself and, the collector at Fernandina, I am satisfied that she was rightfully seized.

Under the provisions of the act of March 2, 1807, the master of a vessel of forty tons burden and upwards, departing coastwise from Charleston for Fernandina, with negroes, mulattoes, or persons of color on board, should have a certified manifest and a permit to proceed to her destination from the collector at the port of departure.

On arrival at Fernandina, if the slaves are destined to be landed there, the master should present his manifest to the collector, and obtain from him a permit to land them. If they are destined to be landed at Jacksonville or Pilatka, it is the duty of the collector at Fernandina to demand the exhibition of the manifest, and satisfy himself that the persons purporting so to be transported under manifest correspond with it in number and description. If the slaves are, in part, destined to be landed at Fernandina, and the residue at Jacksonville or Pilatka, a permit should be given by the collector at Fernandina for the landing of the slaves destined for his port, and the fact of such landing, and the names of the slaves so landed, should be endorsed by him on the manifest, which should be returned to the master of the vessel. On arrival at Jacksonville, the same proceedings should be had by the master and collector at that port, respectively, as at Fernandina, in the case above supposed.

The master of a vessel of the burden of forty tons or upwards, taking in slaves at Jacksonville, destined to be landed at Fernandina or Charleston, or taking slaves at Fernandina, destined to be landed at Charleston, Jacksonville, or Pilatka, must have a certified manifest of the slaves, as prescribed in the act of 2d March, 1807, and a permit from the collector to proceed to the port of destination; and



these documents must be exhibited by the master to the collector, on demand, at every intermediate port at which the vessel may stop on the route.

I do not concur with one of my predecessors in construing the exception in the 8th section of the act of the 2d March, 1807, as permitting slaves to be transported from one port to another within the same State, in any vessel or species of craft whatever, without manifest or permit. I do not feel at liberty to extend the exception beyond its plain and obvious meaning, but must confine it, as its terms import, to routes exclusively on rivers and inland bays of the sea. Applying the exception, as construed by the department, to this case, I am of opinion that the transportation of slaves taken on board a vessel at Pilatka to be landed at Jacksonville, or taken on board at Jacksonville to be landed at Pilatka, is the only part of the route between Pilatka and Charleston that would fall within it.

The foregoing observations, it will be distinctly understood, have exclusive reference to the act of 2d March, 1807.

The proceedings to be had by the masters of vessels and collectors, under the several laws regulating the coasting trade, are clearly described in the "General Regulations" of the department, issued on the 1st February last, and you are referred to them for your information and government. I am satisfied, from a careful examination of the laws, that no fee should be exacted by collectors for certifying or endorsing the manifests, or granting the permits prescribed in the act of 2d March, 1807, and you will exact none for these services in future. That law makes no provision for any fee or compensation for manifests or permits, and the coasting act of the 18th February, 1793, the only law prescribing fees in regard to manifests and permits of vessels sailing coastwise, confines them to manifests and permits issued under that act.

The seizure of the "Carolina" being approved by this department, the government will not be liable for alleged injuries or damage consequent upon the same; but inasmuch as the master of that vessel appears to have acted under an erroneous construction of the law, derived by him from an officer of customs, I have to instruct you to deliver up that vessel without delay, and without cost, to her owners or their agent, if she has not been attached by process of court; but if she has been so attached, you will show this letter to the United States district attorney, who will regard it as a direction and authority to him to take the proper steps to discontinue the legal proceedings, and release the vessel.

You will duly advise the master of the "Carolina," and other vessels arriving at your port, of the foregoing regulations, which will be enforced by you in all cases to which they apply.

It is proposed to prescribe, in the next circular issued by the department, proper regulations, under the act of March 2, 1807.

Very respectfully, your obedient servant,

HOWELL COBB,  
*Secretary of the Treasury.*

JAS. G. DELL, Esq.,  
*Collector of the Customs, Jacksonville, Florida.*

Thus far the case would seem to be entirely against the memorialists; so much so, indeed, that it would seem unnecessary to pursue the case further. And the inquiry might reasonably arise, on what pretext was the steamer released from the consequence of so palpable violation of the law? But justice requires that we should present the other side of the case, and look for an answer to the second proposition presented.

In the first place, then, the memorialists show that the law had been differently construed on some of the points involved, in 1846, by Hon. R. J. Walker, then Secretary of the Treasury; that Mr. Walker had held, in a similar case, that it was "not necessary to pursue the requirements of the 9th and 10th sections of the law of 1807, in cases where family servants, being slaves, may be casually transported coastwise from one district to a port in another district in the same State;" that they were acting under this decision at the time of their misfortune, it never having been reversed, and that the 9th and 10th sections of the law of 1807 were, in consequence of this decision, regarded as obsolete, so far as concerned the coastwise transportation of slaves.

Then, again, they present the following communication from the collector at Fernandina, under date of May 25, 1857, addressed to the Secretary of the Treasury, as clear evidence that the master of their steamer, if he had erred at all, had been misled by the government's own agent:

*Letter of F. Livingston.*

CUSTOM-HOUSE, FERNANDINA, FLORIDA,  
May 25, 1857.

DEAR SIR: I presume that ere this time you have been informed of the seizure, by the collector of the port of Jacksonville, of the United States mail steamer Carolina, plying between the ports of Charleston, Fernandina, and the St. John's river.

As I myself was indirectly, probably, the cause of the difficulty between the captain of the Carolina and the collector of St. John's, I deem it but justice to Captain Surtis that I should make known to the department the course which I pursued, and which resulted in this seizure. You will remember that, before the passage of the late act of Congress establishing the district of Fernandina, all of the coast within the limits of that district belonged to the district of St. John's, and was under the jurisdiction of the present collector of that port.

After my appointment as collector of the district of Fernandina, I took several weeks to consider the question as to whether this steamer was required by the revenue laws to enter and clear at that port. I became satisfied that the regulations required her to do so, and on the 1st of the present month of May I gave written instructions to the officer in command to comply in this respect. The captain was convinced of the correctness of my position, (as were also, it seems, the officers of customs at Charleston,) and from thenceforward, up to the time of the seizure of the boat, regularly entered and cleared both vessel and her slave passengers at that port, in obedience to my instructions.

It is for his compliance in this respect, to wit, his entering and clearing at the port of Fernandina, instead of at the port of Jacksonville, as formerly, that I understand the boat has been seized.

I would now beg to submit to your consideration the grounds upon which I based my instructions.

This steamer takes her departure regularly once a week from the port of Charleston, and sails directly for the port of Fernandina, where she lands mail, passengers and freight; from thence she proceeds to the different ports on the St. John's river. On her return trip she returns from the St. John's to Fernandina, and from thence (the latter place) takes her departure for Charleston with mail, passengers and freight.

The steamer Carolina sails under a coasting license, and you will remember that "the southern limits of Georgia," or, in other words, the "St. Mary's river," is the boundary between two of the great coasting districts into which the seacoast of the United States is divided.

The port of Charleston is one great coasting district, and the port of Fernandina, being south of the St. Mary's river, is in another great coasting district, and not in an adjoining State. The steamer, therefore, under the law regulating the coasting trade, upon her arrival at Fernandina, from Charleston, was bound to enter, that being the first port at which she is appointed to arrive after leaving the coasting district from which she sailed. When she leaves Fernandina to proceed to the St. John's, she sails for a port both within the same great coasting district and the same State, and is, therefore, I take it, not bound to either clear at the one or enter at the other port, but may proceed under a permit and manifest by being merely reported at the custom-house at Jacksonville. The same on her return trip to Fernandina. But when she takes her departure from Fernandina for Charleston, she again leaves the coasting district from whence she sailed, and is bound for a port, as before stated, in another coasting district, and not in an adjoining State; therefore she should be cleared at that port for Charleston.

So with regard to slave passengers, under the construction of the act of 1807, given by your predecessor, "the Hon. R. J. Walker," in his letter to the collector of Georgetown, S. C., dated September 19, 1846. I presume it is unnecessary to enter or clear slave passengers carried from Fernandina to Jacksonville, or *vice versa*, both ports being in the same State. But in carrying them from Fernandina to Charleston, or Charleston to Fernandina, the rule is different, as in that case they are carried from a port in one State to a port in another State—the two ports not being on the same inland bay or river.

Thus much in defence of my own position and in justification of the course of Captain Surtis, who, I presume, got into difficulty by his obedience to my instructions. I trust that it will not be deemed improper in me to express the hope that if Captain Surtis should be found to have technically violated any regulations of the revenue laws, that he may not be dealt with harshly, inasmuch as there is no pretence of any fraudulent intent on his part.

As there are several other boats which may be involved in the same

difficulty, I would be glad to have the instructions of the department upon the points above presented.

With the highest consideration, &c.

F. LIVINGSTON,  
*Collector.*

Hon. HOWELL COBB,  
*Secretary of Treasury.*

It is thus seen that Mr. Livingston frankly admitted that he had, to no inconsiderable extent, differed with the collector at Jacksonville as to the proper construction of the law, and that he had directed the master of the steamer Carolina accordingly, and that he had not changed these directions at the time the difficulty in view arose. These are, doubtless, the circumstances which induced the Secretary of the Treasury to remand the steamer to her owners, whilst holding that she had violated the law in the case presented by the collector at Jacksonville.

The committee have thus presented a brief history of the leading points in the case, and, whilst they acknowledge the force of some of the facts presented by the memorialists to show that they were not wilful offenders, they can discover no proper principle on which to award damages against the government.

They concur in the decision of the Secretary of the Treasury, that the collector at Jacksonville had a legal right, on the admitted facts of the case, to seize and detain the steamer of the memorialists, and that decision forbids the idea of damages for the act on the part of the government. Had the seizure been clearly illegal, a different conclusion might have been reached. But the government cannot pay damages for the consequence of the legal acts of its agents. The penalties for a violation of the law in view are very severe, and in consideration of the mitigating circumstances already presented, they have all been waived or released, and it would seem that the case has been about as well disposed of as it can be. The master of the steamer, in our opinion, was clearly at fault in the practical progress of the controversy. Whatever difference of opinion may have existed as to the proper construction of the law, it was the obvious duty of the master to conform to the construction put upon it by the officers at Jacksonville, as at every other port, until the point of difference could be submitted and settled by the Treasury Department. The repeated and persistent disregard of the directions of the collector at Jacksonville, on the part of the master—amounting almost to an invitation to seize and detain the steamer—is a fatal defect in the case of the memorialists.

The committee report against the prayer of the memorialists, and submit the following resolution:

*Resolved*, That the committee be discharged from the further consideration of the subject.